



## AFP Practical Guide on extraterritorial search warrants (ACT Policing)

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### 1. Disclosure and compliance

This document is classified **UNCLASSIFIED** and is intended for internal AFP use.

This instrument is suitable to proactively disclose under the Commonwealth [Information Publishing Scheme](#).

## Compliance

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

## 2. Acronyms

<b>AFP</b>	Australian Federal Police
<b>CPO</b>	Chief Police Officer
<b>DCPO</b>	Deputy Chief Police Officer
<b>ACT</b>	Australian Capital Territory
<b>ETSW</b>	Extraterritorial search warrant

## 3. Definitions

**Appropriate authority** - is defined in Part 11 of the *Crimes Act 1900* (ACT) and includes an authorised representative.

**Offence** - is defined in Part 11 of the *Crimes Act 1900* (ACT).

**Receiving State or Territory** - means the State or Territory receiving property seized by another jurisdiction.

**Seizing State or Territory** - means the State or Territory seizing property for investigation in another jurisdiction.

## 4. Guideline authority

This guideline was issued by the Chief Police Officer for the ACT using power under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C of the Act.

## 5. Introduction

This practical guide outlines how members obtain extraterritorial search warrants for evidence which is not obtainable in another manner and is physically located in:

- another jurisdiction and relevant to an offence committed in the ACT
- the ACT and relevant to an offence committed in another Australian jurisdiction.

It should be read with the relevant arrangements between the Attorney-General of the Commonwealth and the Attorney-General of the relevant State or Territory and Part 11 of the *Crimes Act 1900* (ACT).

## 6. Legislative considerations

Members must only use extraterritorial search warrants (ETSWs) for offences committed under ACT legislation and not for Commonwealth offences (Part 11 of the [Crimes Act 1900](#) (ACT)).

Members must also ensure that the following statutory requirements are met before seeking or facilitating an ETSW:

- the offence must be indictable and attract criminal liability in the other jurisdiction
- only property believed on reasonable grounds to be relevant to the investigation of the offence may be seized and/or removed.

When applying for an ETSW members must provide sufficient evidence for the magistrate per s. 255(1) of the *Crimes Act 1900* (ACT).

Members must note that issuing a warrant under Part 11 of the *Crimes Act 1900* (ACT) requires 'reasonable grounds for belief', as opposed to 'reasonable grounds for suspecting', which is the threshold for search warrants issued under other ACT Acts.

## 7. Liaison officers

Each Australian jurisdiction has a nominated liaison officer through whom all applications for extraterritorial search warrants (ETSWs) must be processed. A list of liaison officers is available at [Attachment 1](#).

The ACT Policing liaison officer is the person holding the position of Crime Manager, Criminal Investigations and is responsible for coordinating all applications for, and executions of, ETSWs for ACT Policing.

The ACT Policing liaison officer must:

- establish and maintain of a register of all:
  - applications received for the issue of ETSWs from other jurisdictions
  - applications submitted by ACT Policing members for the execution of ETSWs in other jurisdictions
  - property seized in the ACT under the provisions of an ETSW
  - persons who have custody of, or access to, the seized property
  - any action taken regarding the property
- ensure that the appropriate authority of the seizing State or Territory is regularly updated (at least every 60 days) on the status of the investigation or proceeding relevant to the seized property, and the likely return date of the seized property.

Members seeking or possessing an ETSW must regularly liaise with the ACT Policing liaison officer to ensure these requirements are met.

## 8. Release and collection of seized property

Members who seize property during the execution of an extraterritorial search warrant (ETSW) in the ACT must only release it to the appropriate authority of the receiving State or Territory with written authorisation from them.

To collect property seized on behalf of ACT Policing under an ETSW executed in another jurisdiction, members must provide a completed 'Authorisation to Receive Objects Seized' form (AFP Forms) to the relevant contact officer either prior to, or at the time of, collection.

Members must confirm when the seizing State or Territory require the authorisation form (see above) - prior to or at the conclusion of the search warrant - and what detail (if any) should be included regarding the actual items seized and subsequently sought by ACT Policing.

Forms may be amended after completion/issue if requested by the other agency. To do this, members must revise the authorisation form by attaching a list of items sought by ACT Policing. The form and list, along with an accompanying explanatory minute, must then be provided to the CPO or DCPO for signature.

Property may be sent through the post or courier or other similar service, if agreed to by the appropriate authorities of both the seizing and receiving State or Territory.

## 9. Warrants executed in the ACT

When dealing with requests for extraterritorial search warrants (ETSWs) from other jurisdictions the ACT Policing liaison officer must:

- receive and record applications for ETSWs
- ensure that the issue and execution of an ETSW does not interfere with any current ACT Policing investigations or operational activities
- nominate an ACT Policing case officer.

The ACT Policing case officer must:

1. prepare the affidavit and search warrant by completing the relevant forms, available in AFP Forms, such as:
  - 'Crimes Act 1900 s255 incoming request affidavit'
  - 'Crimes Act 1900 s255 incoming request affidavit - vehicle'
  - 'Crimes Act 1900 S255 incoming request warrant for a vehicle'
  - 'Crimes Act 1900 S255 incoming request warrant for premises'
2. make application for the warrant by providing the affidavit and search warrant to an ACT magistrate (considering the application threshold in s. 6 above)
3. provide the affidavit and a copy of the search warrant to the magistrate for filing in the Magistrates Court, in accordance with s. 255(6) of the *Crimes Act 1900* (ACT)
4. plan the execution of the search warrant, considering any operational and/or investigative requirements
5. execute the search warrant
6. secure all seized property in accordance with the [AFP National Guideline on property and exhibits](#) and ACT Policing property and exhibit handling protocols, until provided to the receiving State or Territory
7. liaise with the ACT Policing liaison officer to ensure that the relevant registers are completed
8. at intervals not exceeding 60 days, update the ACT Policing liaison officer regarding the investigation/proceeding status, and the likely return date of the seized property
9. ensure that a copy of the register, together with the seized property, is forwarded to the

appropriate authority, on receipt of a completed 'Authorisation to Receive Objects Seized' form

10. ensure that, as soon as practicable after it is made, a copy of any court order affecting the seized property is provided to the appropriate authority of the receiving State or Territory
11. complete relevant entries in the ACT Policing Search Warrant Register.

## 10. Warrants executed in other jurisdictions

The authority to issue an extraterritorial search warrant (ETSW) for an offence in the ACT rests with the Chief Police Officer (CPO) or Deputy Chief Police Officer (DCPO).

To seek an ETSW for premises in another jurisdiction, the case officer must prepare a minute using the 'Crimes Act 1900 s255 outgoing request minute to CI Crime Manager' (AFP Forms) and send it to the ACT Policing liaison officer for attention.

To accompany the minute, the case officer must also prepare the following forms (available in AFP Forms):

- 'Crimes Act 1900 Section 255 outgoing affidavit'
- 'Authority to Request Search Warrant in Another Jurisdiction'
- 'Authorisation to Receive Objects Seized'

Upon receipt of these documents the ACT Policing liaison officer must either:

- return them to the case officer for revision if incomplete or lacking sufficient evidence
- forward the authorising documents to the CPO or DCPO for signature if satisfied the evidence is sufficient.

Once the ETSW is approved the case officer should:

- swear/affirm the affidavit before an ACT magistrate
- forward all documents to the contact officer.

The ACT Policing liaison officer should then:

- notify the relevant jurisdictional liaison officer ([Attachment 1](#)) and forward:
  - the sworn/affirmed affidavit
  - a copy of the signed 'Authorisation to Receive Objects Seized' form
- request the receiving jurisdiction to:
  - attend the relevant court and swear/affirm the ETSW affidavit
  - execute the ETSW
  - hand any seized property to the ACT Policing appropriate authority in accordance with s. 8 above.

The case officer must, as soon as is practicable, ensure that the appropriate authority of the seizing State or Territory is notified when property is no longer required for an investigation/proceeding.

## 11. Further advice

Queries about the content of this guideline should be referred to Superintendent Criminal Investigations.

## 12. References

### Legislation

- [Crimes Act 1900](#) (ACT)

### AFP governance

Arrangement between the Attorney-General of the Commonwealth and the Attorney-General of:

- [New South Wales](#)
- [the Northern Territory](#)
- [Queensland](#)
- [South Australia](#)
- [Tasmania](#)
- [Victoria](#)
- [Western Australia](#).

Note: The Ministerial arrangements above refer to s. 358E of the *Crimes Act 1900* (ACT) rather than s. 258. Section 94 of the [Legislation Act 2001](#) (ACT) requires that these arrangements remain in force despite changes to the *Crimes Act 1900* (ACT) since 1989.

### AFP Forms

- [Crimes Act 1900 s255 incoming request affidavit](#)
- [Crimes Act 1900 s255 incoming request affidavit - vehicle](#)
- [Crimes Act 1900 s255 incoming request warrant for a vehicle](#)
- [Crimes Act 1900 s255 incoming request warrant for premises](#)
- [Crimes Act 1900 s255 outgoing request minute to CI Crime Manager](#)
- [Crimes Act 1900 s255 outgoing affidavit](#)
- [Authority to Request Issue of a Search Warrant in Another Jurisdiction](#)
- [Authorisation to Receive Objects Seized](#)

## 13. Attachments